

CERTIFICATE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1898.

No. 16,781 *42*

THE NEW ENGLAND RAILROAD COMPANY, PLAINTIFF
IN ERROR,

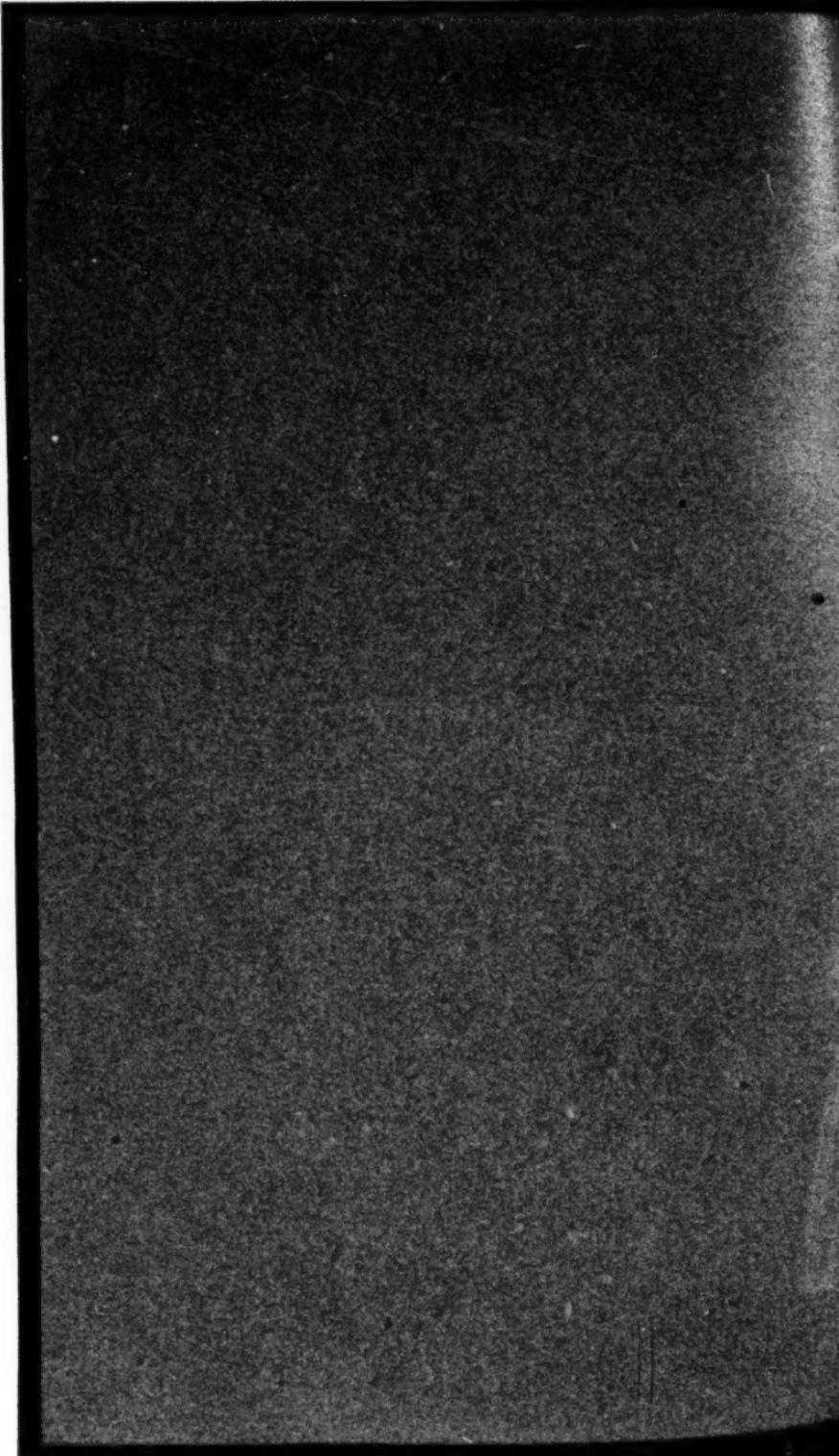
vs.

ROBERT T. COMBOY, ADMINISTRATOR

ON A CERTIFICATE FROM THE UNITED STATES CIRCUIT COURT OF
APPEALS FOR THE FIRST CIRCUIT.

FILED JANUARY 26, 1899.

(16,781.)



(16,781.)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1898.

No. 229.

THE NEW ENGLAND RAILROAD COMPANY, PLAINTIFF
IN ERROR,

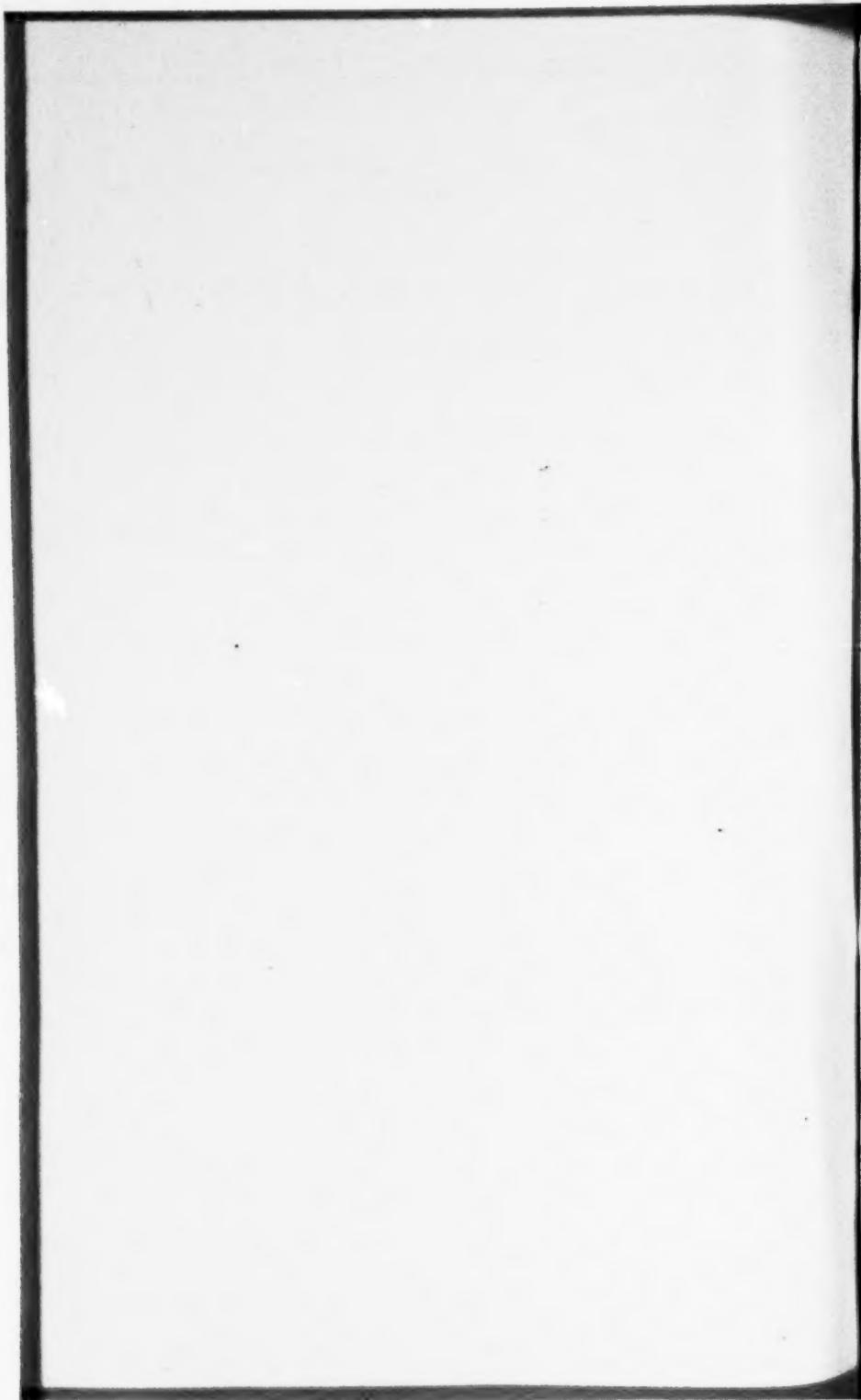
vs.

ROBERT T. CONROY, ADMINISTRATOR.

ON A CERTIFICATE FROM THE UNITED STATES CIRCUIT COURT OF
APPEALS FOR THE FIRST CIRCUIT.

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1 United States Circuit Court of Appeals for the First Circuit,
October Term, 1897.

THE NEW ENGLAND RAILROAD COMPANY, Defendant,
Plaintiff in Error, }
v. } No. 207.
ROBERT T. CONROY, Administrator, Plaintiff, Defendant }
in Error.

Error to the circuit court of the United States for the district of
Massachusetts.

Before Colt, Webb, and Aldrich, JJ.

*Questions of Law Certified by the United States Circuit Court of Appeals
for the First Circuit to the Supreme Court of the United States.*

December 24, 1897.

The facts in this case are as follows:

On the fifteenth day of December, 1894, a freight train of the defendant company, drawn by a steam locomotive, and carrying an engineer, a fireman, three brakeman and a conductor set out from Worcester, in the Commonwealth of Massachusetts, for the city of Providence, in the State of Rhode Island. The train, which consisted of the locomotive and tender, thirteen or fourteen freight cars and a caboose car, was heavily loaded with freight. The train left Worcester at about 7.15 p. m. and proceeded on its way without accident, until when at a point on the railroad in the State of Rhode Island, away from telegraphic communication and not at a station, and distant from Providence about sixteen miles, the engineer discovered by the motion and behavior of the locomotive that the train had broken apart. He immediately gave signals with the whistle to indicate to the trainmen upon the rear portion of the train that it was broken off, and continued to repeat those signals, which consisted of three rapid blasts of the whistle with very brief intervals between the different threes, while the locomotive and the one car which remained connected ran three-quarters of a mile. The locomotive with the connected car ran about two and three-quarters miles when the engineer, not being able to see anything of the separated part of the train, and supposing that his signals had been heard and its advance stopped, slowed up the engine preparatory to sending the fireman back with the lantern and to take steps for restoring the connection of the parts of the train. Before speed had been so reduced that the fireman could alight from the train, the rear portion was discovered close at hand and approaching at great speed. The fireman gave notice of this fact and a signal for the locomotive to go ahead, but before it could gain speed to get away a collision between the two parts of the train took place, and one Gregory, a brakeman, who was on the top of the car still attached

to the engine, was thrown from the car by the shock and instantly killed.

The three brakemen on the train were a head, a middle and a rear brakeman. Gregory was the head brakeman, and at once, on discovery of the separation of the train, went to the top of the only car left with the engine. The conductor and the middle and rear brakeman had been riding in the caboose car at the rear end of the train, and did not hear the warning signals which the engineer gave with the whistle, nor know that the train had broken until the collision, but remained all the time in the caboose. The night was cold and clear. The accident was near midnight.

3 The negligence complained of consisted in the alleged failure of the conductor in control of the men and in charge of the train, in view of the character of the night, the character of the road in respect to grades and curves, the speed at which the train was run, and the liability of the train to part asunder at that place, to properly watch and supervise its movements, and the fact that he, in the full knowledge that the rear and middle brakemen were in the caboose, away from their brakes, permitted them to remain there, and failed to order them to the brakes.

The jury were instructed : "The conductor of the train, under the rules laid down by the rules of the Supreme Court of the United States, is in a peculiar and special condition. The conductor of the train, as I understand the theory of the rule of the Supreme Court of the United States, is, in a certain sense, between stations, at least, is in a certain sense like the master of a ship on a voyage; he is beyond the reach of orders when running his train between stations; and therefore as a matter of necessity, as a matter of public policy, I suppose, he must be held to stand in the place of the corporation itself. * * * If you find in this particular case, from the evidence in the case and such common knowledge as jurymen are entitled to use, that by the rules of this road, * * * the conductor gave directions to the people who worked on the train, gave directions to start the train, gave directions to stop the train, gave directions as to the location and position of the different men on the train, and also had the general management of the train and control over it when running between stations, then I say to you, gentlemen, that he for this case represents the company, and if injuries resulted from his negligent acts the company is responsible."

The jury returned a verdict for the plaintiff, and assessed damages in the sum of four thousand two hundred and fifty dollars.

4 The defendant brought the case by writ of error to this United States circuit court of appeals for the first circuit.

And, upon consideration of the case, after full argument, the judges of this court desire the instructions of the Supreme Court upon the following questions of law arising on the facts as before stated :

1st. Whether the negligence of the conductor was the negligence of a fellow-servant of the deceased brakeman ?

2d. Whether the negligence of the conductor was the negligence

of its vice, or substituted principal, or representative, for which the corporation is responsible?

It is now, to wit, December 24, 1897, ordered, that the foregoing statement of facts, and questions of law arising thereon, together with the fact that this court desires the instruction of the Supreme Court for the proper decision of said questions of law, be certified under the seal of this court, and transmitted to the Supreme Court.

By the court:

JOHN G. STETSON, *Clerk.*

5

Certificate of Certification.

United States Circuit Court of Appeals for the First Circuit.

And now here the judges of the United States circuit court of appeals for the first circuit certify that the foregoing is a true copy of an order of court entered on December 24, 1897, in said cause, numbered and entitled: No. 207, The New England Railroad Company, defendant, plaintiff in error, *vs.* Robert T. Conroy, administrator, plaintiff, defendant in error, and that, pursuant to said order, the statement of facts and questions of law arising thereon, together with the fact that said circuit court of appeals desires the instruction of the Supreme Court of the United States for the proper decision of said questions of law contained in said order, are hereby certified under the seal of said United States circuit court of appeals for transmission to said Supreme Court.

In testimony whereof I hereto set my
Seal United States Circuit hand and affix the seal of said United
Court of Appeals, First States circuit court of appeals for the
Circuit. first circuit, at Boston, in the first judicial circuit, this thirteenth day of
January, A. D. 1898.

JOHN G. STETSON, *Clerk.*

Endorsed on cover: Case No. 16,781. U. S. C. C. of appeals, first circuit. Term No., 229. The New England Railroad Company, plaintiff in error, *vs.* Robert T. Conroy, administrator. (Certificate.) Filed January 26th, 1898.